



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
120 BROADWAY, NEW YORK, NEW YORK 10271

ELIOT SPITZER
Attorney General

DOCKET FILE COPY ORIGINAL

RECEIVED

SEP 22 1999

Federal Communications Commission
Office of Secretary

MARY ELLEN BURNS
Assistant Attorney General In Charge
Bureau of Telecommunications and Energy

KEITH H. GORDON
Assistant Attorney General
Vox: (212) 416-8320
Fax: (212) 416-6003
E-mail: Keith.Gordon@OAG.State.NY.US

September 21, 1999

RECEIVED

SEP 22 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12 Street SW, Counter TWA 325
Washington, D.C. 20554

Re: WT Docket No. 99-207, Comments in Response to June 10, 1999 Declaratory Ruling and Notice of Proposed Rulemaking: In the Matter of Calling Party Pays Service Offering in the Commercial Mobile Radio Services.

Dear Ms. Salas:

The attached comments by New York State Attorney General Eliot Spitzer are hereby submitted pursuant to the Commission's June 10, 1999 Declaratory Ruling and Notice of Proposed Rulemaking. We were prevented from filing on Friday, September 17, 1999 by the effects of Hurricane Floyd, which devastated my home area, closing all roads and knocking out telephone service. As Monday, September 20, 1999 was a religious holiday, I was out of state. On Friday, Assistant Attorney General Jill Ellen Sandford called the Commission on my behalf and was advised by David Siehl, FCC Wireless Bureau Policy Division Staff that an extension of the filing deadline until today would be granted. I thank you for your cooperation and assistance. A Motion to extend the filing deadline is also enclosed.

In addition to these electronically filed Motion and Comments, a signed paper copy is being sent by overnight delivery.

Sincerely,

Keith H. Gordon
Assistant Attorney General

No. of Copies rec'd
List ABCDE

049

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC. 20554

RECEIVED

SEP 22 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Calling Party Pays Service Offering in the
Commercial Mobile Radio Services.

)
) WT Docket No. 97-207
)

**Motion for Extension of Time
To File Comments on Behalf of the
Attorney General of the State of New York**

Mary Ellen Burns
Assistant Attorney General In Charge
Keith H. Gordon
Jill Ellen Sandford
Assistant Attorneys General
Bureau of Telecommunications and Energy
of counsel
120 Broadway, Room 23-76
New York, NY 10271
(212) 416-8320
Fax: 416-8877
Keith.Gordon@oag.state.ny.us

September 21, 1999

Motion For Time Extension

Pursuant to Rule 1.46 of the Federal Communications Commission's Rules of Procedure (45 CFR §1.46), the New York State Attorney General's Office requests an extension of the filing deadline for comments in WT Docket 99-207 from Friday, September 17, 1999 until Tuesday, September 21, 1999 for the following reasons:

1. I am Keith H. Gordon, an Assistant Attorney General employed in the Telecommunications and Energy Bureau of the New York State Attorney General's Office located in Manhattan, New York.
2. I prepared the New York State Attorney General's Office comments in WT Docket No. 97-207, with the assistance of Assistant Attorney General Jill Ellen Sandford. These comments were ready for filing on Friday, September 17, 1999, the filing deadline noticed by the Commission.
3. On Thursday and Friday, September 16-17, 1999, Hurricane Floyd caused extensive damage to the Yorktown, New York region where I reside. Due to more than 12 inches of rain, all roads between my home and office were closed, as were the public transit systems. In addition, telecommunications services from my home were interrupted by the severe flooding that ensued. Jill Ellen Sandford, who worked on these comments with me, was also prevented by the state of emergency in Westchester County, New York from reaching the office on Friday, September 17, 1999. President Clinton has since declared a federal disaster in Westchester County due to the severe storm and flooding damage that occurred.
4. However, as Jill Ellen Sandford's telephone service was functional, she called the Federal Communications Commission on Friday, September 17, 1999 and explained the emergency conditions that prevented the New York State Attorney General's office from filing its comments on time. She spoke with David Siehl of the Wireless Bureau Policy Division, who assured her that the New York Attorney General's Office comments would be accepted by the Commission if filed on

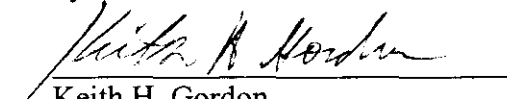
Tuesday, September 21, 1999.

5. As Monday, September 20, 1999 is a major religious holiday, both Jill Ellen Sandford and myself were not at work. This prevented our filing from being made before Tuesday, September 21, 1999.

6. This request for an extension of time could not be filed seven days prior to the deadline, as provided in Rule 1.46 because of the unplanned emergency conditions that were not anticipated to be so severe.

For the foregoing reasons and circumstances, the requested time extension is reasonable and necessary, and should be granted. No other parties will be adversely affected by the granting of this Motion.

Respectfully submitted,
Eliot Spitzer
Attorney General of the State of New York
by


Keith H. Gordon
Assistant Attorney General

Mary Ellen Burns
Assistant Attorney General In Charge
Keith H. Gordon
Jill Ellen Sandford
Assistant Attorneys General
Bureau of Telecommunications and Energy
of counsel
120 Broadway, Room 23-76
New York, NY 10271
(212) 416-8320
Fax: 416-8877
Keith.Gordon@oag.state.ny.us

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC. 20554

In the Matter of:

Calling Party Pays Service Offering in the
Commercial Mobile Radio Services.

)

)

)

WT Docket No. 97-207

**Comments of Eliot Spitzer
Attorney General of the State of New York**

Mary Ellen Burns
Assistant Attorney General In Charge
Keith H. Gordon
Jill Ellen Sanford
Assistant Attorneys General
Bureau of Telecommunications and Energy
of counsel
120 Broadway, Room 23-76
New York, NY 10271
(212) 416-8320
Fax: 416-8877
Keith.Gordon@oag.state.ny.us

September 21, 1999

Background

By Declaratory Ruling and Notice of Proposed Rulemaking (“NPRM”) dated June 10, 1999, the Federal Communications Commission (“FCC” or “Commission”) solicited public comment on a host of issues relating to a calling party pays (“CPP”) service offering in the commercial mobile radio services.¹ The proposed rulemaking discusses what requirements and protections are appropriate in the event that wireless telephone companies offer subscribers the option to shift the cost of airtime charges to the party placing a call to a wireless telephone.² The comments of the New York State Attorney General’s Office address certain of these issues and offer several recommendations.

Summary of Comments

The availability of CPP wireless options has the potential to expand the number of consumers using mobile telephones. The interstate aspects of such communications justify a federal standard applicable throughout the country. Because of the marked departure from the *status quo ante*, and the potential variations in billing rates and choices, callers to a wireless telephone should be aurally warned that they will be charged airtime fees, the rate(s) applicable for the call, and how to terminate the call without incurring such fees. Both residential and business telephone subscribers should have the ability to block CPP calls from being made on their access lines, so as to maintain control over the charges they may be responsible to pay if others use their telephones. There are a number of legal, policy and technical issues concerning how CPP charges should be collected for which we offer suggestions.

¹ WT Docket No. 97-207, *In the Matter of Calling Party Pays Service Offering in the Commercial Mobile Radio Services*, released July 7, 1999.

² At present, most wireless carriers bill subscribers for both calls placed from and to their wireless telephones, commonly referred to as “airtime”.

Interest of the New York State Attorney General

The New York State Attorney General advocates on behalf of New York consumers, especially residential and small business telecommunications and public utility customers. The interest of New York consumers in the FCC's CPP NPRM is manifest. Both as wireless service subscribers, and callers to wireless subscriber lines, commercial and residential consumers living or working in New York would be affected directly by the CPP proposals under consideration.

General Issues

While it is difficult to confirm the FCC's premise that many consumers have been reluctant to subscribe to wireless service out of concern for the expenses incurred while making and receiving calls, we agree that many non-business wireless subscribers are price-sensitive.³ We think it is likely that many consumers often keep their wireless phones off to prevent becoming responsible for air time charges on unanticipated incoming calls. Even without quantifying such behavior, it is likely that the alternative of CPP would stimulate wireless telephone service use by some consumers.⁴

The NPRM also suggests that a CPP option might lead to an increase in wireless phone usage to such an extent that it would become an effective alternative service competitive with local

³ The Attorneys General's offices receives annually thousands of consumer complaints on a variety of issues, including wireless telephone problems.

⁴ On the other hand, it appears that the wireless market has grown substantially since the previous NOI comments were received. *See, e.g.,* Bell Atlantic's September 1, 1999 press release announcing that it now has more than 10 million wireless customers. New pricing options offered by major wireless phone service providers, such as the recent trend towards bundling large volumes of monthly minutes of usage in a flat rate plan, have the potential to expand consumer willingness to subscribe to wireless services, and lessen the differences between wireless and land-line calls. When all this recent data is considered, the FCC might conclude that the wireless market is so dynamic that CPP is not needed to expand subscribership.

telephone services.⁵ The inroads that wireless service appears to be making into the usage of public telephones lend some support to this possible development.

We believe the FCC should not mandate CPP, but make it an option available to wireless subscribers, along with other options such as the “subscriber pays” standard now commonly used. While some customers may prefer to shift the airtime fees to the calling party, there are likely to be many other customers who prefer to receive wireless calls without the caller having to pay the air time fees (just as many customers are willing to receive long distance calls over an area code 800/888 number without toll charges to the caller). Indeed, Bell Atlantic Mobile, for example, has indicated that it is considering employing Advanced Intelligent Network features to permit subscribers to change from CPP to subscriber pays modes and back using a toggle feature, and to register a list of preferred callers’ telephone numbers that would not be handled as CPP calls.⁶

If CPP is to become a widely available option in the United States, the Commission should adopt uniform nationwide industry standards regarding CPP consumer protections. Determining these issues on an individual state basis, or even according to each carrier’s region, would be impractical and introduce unjustified consumer confusion. Consumers using wireless phones, and others making land-line calls to wireless phones, would be hopelessly confused if the rules for CPP calls are not standardized from coast to coast. Consumers now use wireless phones to place and receive local, regional and interstate calls so extensively that CPP standards which differ among the states or regions would be untenable. For example, calls to a wireless phone subscriber located in the New York City area often involve multiple states due to widespread business distribution and commuting patterns in the New York-New Jersey-Connecticut metropolitan area.

⁵ NPRM, ¶ 21.

⁶ Described by Bell Atlantic Mobile in a conference call with numerous state Attorneys General on August 9, 1999.

Notice and Consent Issues

A fundamental right is the ability of the consumer to know the essential terms of a contract before becoming obligated. Otherwise, the parties have failed to have a meeting of the minds such as to justify a legal agreement, and instead the consumer is subjected to a contract of adhesion. One such essential term is always the cost of service. If CPP is permitted, consumers must receive notice whenever they place a call to a CPP wireless telephone that: (a) the caller will be liable for airtime fees; (b) the rates (s) applicable to that particular call, such as “X” cents per minute; and (c) how to end the call without incurring such charges. Without such aural notice, the caller cannot be said to have entered an agreement to pay charges for the airtime whenever they happen to call someone using a CPP phone.

Callers must receive an audible message that warns them when they have reached a CPP wireless subscriber. No other method discussed in the NPRM would suffice to provide the caller with effective notice. It would be impractical to segregate all CPP wireless lines to specific area codes because of the likelihood that their number would exceed the availability of such special area codes (even if callers could reasonably be expected to recognize such numerical codes as indicating CPP lines)⁷. Furthermore, use of such features as call forwarding can result in a call placed to a land-line number actually ringing on a wireless telephone, without the calling party’s knowledge, absent a direct audible CPP notice.

Merely providing a distinct audible signal to distinguish CPP from other calls, without rate disclosure, would not sufficiently protect calling parties. Simply warning the caller that they have

⁷ Given the rapid multiplication of area codes in recent years, with LATAs being subdivided or overlaid with new area codes with growing frequency, consumers should not be expected to memorize a separate set of special area codes. There is already more than enough confusion as consumers adjust to “1010-XXX” dial-around codes and special terms applicable to area codes 800, 888, 900, for example.

reached a CPP telephone may not give enough useful information for the caller to decide if that particular call is worth the actual cost of completing the call. Given the broad range in wireless phone calling rates, and the fact that land-line callers would often be unaware of a called party's specific CPP rates, callers might not wish to open themselves to higher than acceptable charges by proceeding with the call. Because some callers would decline to make CPP calls that they might have been willing to complete, had they been told the cost of the call, call volumes placed to CPP wireless subscribers could be suppressed. Some wireless carriers might offer CPP subscriptions that subsidize the subscriber by loading on exorbitant CPP airtime charges to broadly expand subscribership at the land-line callers' expense.⁸ Without disclosure to the caller of CPP charges, the carrier and subscriber are determining the costs to be paid by the caller. Indeed, one competitive effect from CPP warning notices that disclose actual rates would be to check excessive charges, as callers' unwillingness to pay unreasonably high rates could discourage such charges.

If feasible, callers should also have the option to shortcut directly to complete the connection without waiting to hear the entire message. For example, if an employer places a call to an employee who is using the company's CPP wireless phone, the employer likely would not need to hear the full warning. This feature should be at the caller's option, and could be activated by the caller at the beginning of the warning message.

Blocking Issues

The NPRM focuses particularly on the need for Centrex business customers to be able to block CPP calls to control costs when employees or customers place calls from their telephones. The New York Attorney General's Office agrees with this concern, which can affect governmental, not-for-profit as well as private business offices. In addition, non-Centrex customers, including

⁸ For example, subscribers might be offered free outgoing wireless service.

many small government offices, businesses and residential customers, also need the ability to block CPP calls. The subscriber who pays the telephone bill should be able to control what kinds of charges can be incurred by guests, children, and others who make use of his or her telephone.⁹ The FCC should not authorize CPP without also requiring effective blocking at the subscriber's option. If the technology exists to identify a call placed to a CPP wireless telephone before the connection is completed so that the warning notice (discussed above) can be provided, it should also be feasible to enable customers to prevent such calls from being completed. Indeed, if the capability exists to provide wireless phones with the option to switch between "subscriber pays" and CPP modes,¹⁰ then it should be equally feasible for land-line local exchange carriers ("LECs") to give subscribers similar control from the calling end. We recommend that, at a minimum, the CPP blocking options available to consumers allow the subscribers to have his or her telephone line programmed by the LEC to prevent all CPP calls from being completed. Instead of receiving the CPP warning message, the caller using a CPP-blocked line could hear a recording stating, "Calls to CPP wireless telephones are not authorized from this telephone."¹¹ In addition, the feasibility of a per-call selective unblocking of CPP to enable the subscriber to complete an urgent call to a CPP wireless telephone should be evaluated. To be effective, the subscriber would have to have a confidential code that he or she could key into telephone to override the CPP blocking feature for individual

⁹ This is not conceptually different from the principle behind consumer protections requiring options to block calls to area code 900 or exchange 976, 540 and other such pay-per-call services.

¹⁰ See, e.g., Bell Atlantic Mobile proposal discussed *supra*.

¹¹ This would be similar to the Caller-ID "anonymous call rejection" message delivered to callers who elect to keep their telephone numbers private.

calls.¹² If technically feasible, both such CPP blocking options should be provided to subscribers without additional charge, and the CPP wireless providers, as well as local service providers should be required to publicize their availability.¹³

Billing Issues

How to make CPP charges a legally binding obligation on the non-subscribing caller is a serious question, given the fact that wireless service is not tariffed, and the CPP service provider has no contractual ties to the caller (or to the subscriber of the land- line from which a call is made). For these reasons, the “non-symmetrical reciprocal compensation” (or European model)¹⁴ should be given strong consideration. By shifting the airtime billing to the callers’ LECs, the issue of contract privity would be resolved (through tariff provisions and cusotmer educational materials). Also, competitive interests between LECs and wireless carriers would likely keep CPP costs at a reasonable level, thereby avoiding the potential for abusive cost shifting between the wireless subscriber and the land-line caller.

One possible means to collect CPP charges would be for all local service providers, on behalf of the CPP wireless provider, to bill their subscribers who make calls to CPP wireless telephones. This would not differ from the existing billing and collection arrangements available to

¹² Such personal identification codes are already used to “freeze” subscribers’ presubscribed carrier selections as a means to preventing slamming. The model of Caller-ID per-call unblocking, using a universal “*82” code would not be satisfactory, as any user of the telephone might override the blocking.

¹³ For example, when the New York State Public Service Commission authorized the introduction of Caller-ID services, it mandated that all subscribers be educated about the privacy impacts of the new features, and their options to choose free all-call or per-call blocking options. *See*, NYSPSC Case 91-C-0428 - *Proceeding on Motion of the Commission to Investigate New York Telephone Company’s Proposal to Institute Caller ID Service*, Opinion No. 92-5, Opinion and Order Authorizing Caller ID Service, issued April 9, 1992, *mimeo* at 41-47.

¹⁴ Discussed at ¶¶ 69-73 of the NPRM.

inter-exchange providers, pay-per-call services, and other similar casual calling charges.

Prearranged credit card account billing might have limited use, as the caller may not know that the telephone he or she is reaching is a CPP wireless telephone until the moment the call is made.

However, it may be feasible to have the caller enter in his or her credit card number when the CPP warning message is delivered.¹⁵

The New York State Attorney General's Office also recommends that the FCC consider the potential complications that CPP poses for the pay phone and prepaid calling card markets. Many consumers who have no local telephone services (either because they are visitors from foreign countries, or cannot afford to subscribe¹⁶) rely on either or both of these services to make calls. If they reach a CPP wireless telephone while using a pay-phone or prepaid calling card, the CPP air time fees could not be billed to any local service account as discussed above. Instead, the CPP fees would have to be deducted from the balance on the prepaid calling card or collected by depositing coins into the pay-phone beyond any other pay-phone and calling card usage charges. Then, the public telephone provider would have to separate the CPP portion of the collected charges and pay this to the appropriate wireless provider. Similarly, a mechanism would have to be designed for the prepaid calling card provider to track and pay to the CPP wireless service provider those air time charges deducted from the caller's prepaid card. CPP service providers should bear the costs of facilitating such collection mechanisms (which would ultimately be incorporated in rates charged to their subscribers). Unless these, or other more commercially practicable processes can be

¹⁵ Indeed, such an arrangement would be one way to alleviate the blocking cost control concerns discussed above.

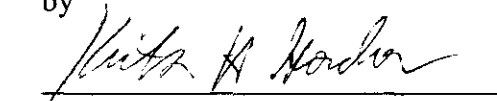
¹⁶ Despite the availability of LifeLine subsidized rates, there remain many consumers who either do not meet the limited eligibility requirements (e.g. in New York State, only those who receive specific public assistance benefits are entitled to reduced cost local service subscription), or they are unable to satisfy arrears owed for prior accounts, and thus are not directly connected to the network.

developed to collect the CPP fees from such callers, it may turn out that pay telephone and prepaid calling card customers would be unable to reach CPP wireless services subscribers. In the event that no feasible means can be devised to collect CPP charges from prepaid calling card and pay phone users, then the CPP wireless providers would have to bill their subscribers for the air time fees generated by such calls, as is the current norm.

Conclusion

The New York State Attorney General welcomes the FCC's consideration of the issues involved in calling party pays and urges the Commission to consider the foregoing comments in implementing any CPP rules applicable to wireless telephone services, so as to preserve adequate consumer protections.

Respectfully submitted,
Eliot Spitzer
Attorney General of the State of New York
by



Keith H. Gordon
Assistant Attorney General

Mary Ellen Burns
Assistant Attorney General In Charge
Keith H. Gordon
Jill Ellen Sandford
Assistant Attorneys General
Bureau of Telecommunications and Energy
of counsel
120 Broadway, Room 23-76
New York, NY 10271
(212) 416-8320
Fax: 416-8877
Keith.Gordon@oag.state.ny.us